

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

[G.R. No. 93010. August 30, 1990.]

NICENCIO TAN QUIOMBING, *Petitioner*, v. COURT OF APPEALS, and Sps. FRANCISCO and MANUELITA A. SALIGO, *Respondents*.

M.B. Tomacruz Law Office for *Petitioner*.

Jose J. Francisco for *Private Respondents*.

D E C I S I O N

CRUZ, J.:

May one of the two solidary creditors sue by himself alone for the recovery of amounts due to both of them without joining the other creditor as a co-plaintiff? In such a case, is the defendant entitled to the dismissal of the complaint on the ground of non-joinder of the second creditor as an indispensable party? More to the point, is the second solidary creditor an indispensable party?

These questions were raised in the case at bar, with both the trial and respondent courts ruling in favor of the defendants. The petitioner is now before us, claiming that the said courts committed reversible error and misread the applicable laws in dismissing his complaint.

This case stemmed from a "Construction and Service Agreement" ¹ concluded on August 30, 1983, whereby Nicencio Tan Quiombing and Dante Biscocho, as the First Party, jointly and severally bound themselves to construct a house for private respondents Francisco and Manuelita Saligo, as the Second Party, for the contract price of P137,940.00, which the latter agreed to pay.

On October 10, 1984, Quiombing and Manuelita Saligo entered into a second written agreement ² under which the latter acknowledged the completion of the house and undertook to pay the balance of the contract price in the manner prescribed in the said second agreement.

On November 19, 1984, Manuelita Saligo signed a promissory note for P125,363.50 representing the amount still due from her and her husband, payable on or before December 31, 1984, to Nicencio Tan Quiombing. ³

On October 9, 1986, Quiombing filed a complaint for recovery of the said amount, plus charges and interests, which the private respondents had acknowledged and promised to pay — but had not, despite repeated demands — as the balance of the contract price for the construction of their house. ⁴

Instead of filing an answer, the defendants moved to dismiss the complaint on February 4, 1987, contending that Biscocho was an indispensable party and therefore should have been included as a co-plaintiff. The motion was initially denied but was subsequently reconsidered and granted by the trial court. The complaint was dismissed, but without prejudice to the filing of an amended complaint to include the other solidary creditor as a co-plaintiff. ⁵

Rather than file the amended complaint, Quiombing chose to appeal the order of dismissal to the respondent court, where he argued that as a solidary creditor he could act by himself alone in the enforcement of his claim against the private respondents. Moreover, the amounts due were payable only to him under the second agreement, where Biscocho was not mentioned at all.

The respondent court sustained the trial court and held that it was not correct at that point to assume that Quiombing and Biscocho were solidary obligees only. It noted that as they had also assumed the reciprocal obligation of constructing the house, they should also be considered obligors of the private respondents under the contract. If, as was possible, the answer should allege a breach of the agreement, "the trial court cannot decide the dispute without the involvement of Biscocho whose rights will necessarily be affected since he is a part of the First Party."

Refuting the petitioner's second contention, the respondent court declared that the "second agreement referred to the Construction and Service Agreement as its basis and specifically stated that it (was) merely a part of the original

agreement.”⁶

The concept of the solidary obligation requires a brief restatement.

Distinguishing it from the joint obligation, Tolentino makes the following observations in his distinguished work on the Civil Code:

A joint obligation is one in which each of the debtors is liable only for a proportionate part of the debt, and each creditor is entitled only to a proportionate part of the credit. A solidary obligation is one in which each debtor is liable for the entire obligation, and each creditor is entitled to demand the whole obligation. Hence, in the former, each creditor can recover only his share of the obligation, and each debtor can be made to pay only his part; whereas, in the latter, each creditor may enforce the entire obligation, and each debtor may be obliged to pay it in full.⁷

The same work describes the concept of active solidarity thus:

The essence of active solidarity consists in the authority of each creditor to claim and enforce the rights of all, with the resulting obligation of paying every one what belongs to him; there is no merger, much less a renunciation of rights, but only mutual representation.⁸

It would follow from these observations that the question of who should sue the private respondents was a personal issue between Quiombing and Biscocho in which the spouses Saligo had no right to interfere. It did not matter who as between them filed the complaint because the private respondents were liable to either of the two as a solidary creditor for the full amount of the debt. Full satisfaction of a judgment obtained against them by Quiombing would discharge their obligation to Biscocho, and vice versa; hence, it was not necessary for both Quiombing and Biscocho to file the complaint. Inclusion of Biscocho as a co-plaintiff, when Quiombing was competent to sue by himself alone, would be a useless formality.

Article 1212 of the Civil Code provides:

Each one of the solidary creditors may do whatever may be useful to the others, but not anything which may be prejudice to the latter.

Suing for the recovery of the contract price is certainly a useful act that Quiombing could do by himself alone.

Parenthetically, it must be observed that the complaint having been filed by the petitioner, whatever amount is awarded against the debtor must be paid exclusively to him, pursuant to Article 1214. This provision states that "the debtor may pay any of the solidary creditors; but if any demand, judicial or extrajudicial, has been made by any one of them, payment should be made to him."

If Quiombing eventually collects the amount due from the solidary debtors, Biscocho may later claim his share thereof, but that decision is for him alone to make. It will affect only the petitioner as the other solidary creditor and not the private respondents, who have absolutely nothing to do with this matter. As far as they are concerned, payment of the judgment debt to the complainant will be considered payment to the other solidary creditor even if the latter was not a party to the suit.

Regarding the possibility that the private respondents might plead breach of contract in their answer, we agree with the petitioner that it is premature to consider this conjecture — for such it is — at this stage. The possibility may seem remote, indeed, since they have actually acknowledged the completion of the house in the second agreement, where they also agreed to pay the balance of the contract price. At any rate, the allegation, if made and proved, could still be enforceable against the petitioner alone as one of the solidary debtors, subject to his right of recourse against Biscocho.

The respondent court was correct in ruling that the second agreement, which was concluded alone by the petitioner with the private respondents, was based on the original Construction and Service Agreement. So too in fact was the promissory note later signed by Manuelita Saligo since it was for the amount owing on the construction cost. However, this matter is not really that important now in view of our conclusion that the complaint could have been filed alone by the petitioner.

The rest of the pieces should easily fall into place.

Section 7, Rule 3 of the Rules of Court mandates the inclusion of indispensable parties as follows:

Sec. 7. Compulsory joinder of indispensable parties. — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

Indispensable parties are those with such an interest in the controversy that a final decree would necessarily affect their rights, so that the court cannot proceed without their presence. Necessary parties are those whose presence is necessary to adjudicate the whole controversy, but whose interests are so far separable that a final decree can be made in their absence without affecting them.⁹ (Necessary parties are now called proper parties under the 1964 amendments of the Rules of Court.)¹⁰

According to Justice Jose Y. Feria, "where the obligation of the parties is solidary, either one of the parties is indispensable, and the other is not even necessary (now proper) because complete relief may be obtained from either."¹¹

We hold that, although he signed the original Construction and Service Agreement, Biscocho need not be included as a co-plaintiff in the complaint filed by the petitioner against the private respondents. Quiombing as solidary creditor can by himself alone enforce payment of the construction costs by the private respondents and as a solidary debtor may by himself alone be held liable for any possible breach of contract that may be proved by the private respondents. In either case, the participation of Biscocho is not at all necessary, much less indispensable.

WHEREFORE, the petition is GRANTED. The decision of the respondent court dated March 27, 1990, is SET ASIDE, and the Regional Trial Court of Antipolo, Rizal, is directed to REINSTATE Civil Case No. 913-A. Costs against the private respondents.

SO ORDERED.

Narvasa (*Chairman*), Gancayco, Griño-Aquino and Medialdea, *JJ.*, concur.

Endnotes:

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1. Rollo, pp. 31-33.
 2. *Ibid.*, pp. 34-35.
 3. *Id.*, p. 36.
 4. *Id.*, pp. 28-30.
 5. *Id.*, p. 42.
 6. *Id.*, p. 25. Penned by Justice Reynato S. Puno and concurred in by Justices Jorge S. Imperial and Artemon D. Luna.
 7. Tolentino, *Civil Code of the Philippines*, Vol. IV, 85 Ed., p. 218.
 8. *Ibid.*, p.228.
 9. *Wyoga Gas and Oil Corp. v. Schrack*, I Fed. Rules Service, 292, cited in I Moran 191, 1979 Ed.
 10. Rule 3, Section 8.
 11. *Feria*, *Civil Procedure*, 1969 Ed., p. 153.